

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:15-cv-00593-FDW

BRIAN E. HANCOCK,

Plaintiff,

v.

MONROE POLICE DEP'T,
Union County District;
J.D. GRIFFIN,

Defendants.

ORDER

THIS MATTER is before the Court on consideration of Plaintiff's pro se complaint, filed pursuant to 42 U.S.C. § 1983. For the reasons that follow, Plaintiff's complaint will be dismissed.

Plaintiff is a state inmate who is serving a term of nearly five years in prison following his conviction for selling a Schedule II controlled substance. In his complaint Plaintiff alleges the defendants subjected him to excessive force during his arrest. Plaintiff plainly admits that he fled officers after being stopped while riding as a passenger in an automobile in Union County, and that he was Tasered once in the leg prior to his apprehension.

District courts are required to review a complaint under Section 1983 when a prisoner "seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). The statute further provides that "the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—(1) is frivolous,

malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” § 1915A(b)(1) & (2).

In conducting this review, the Court must determine whether the complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327–28 (1989). While a pro se complaint must be construed liberally, Haines v. Kerner, 404 U.S. 519, 520 (1972), this requirement of liberal construction will not permit a district court to ignore a clear failure to allege facts in the complaint which set forth a claim that is cognizable under federal law. Weller v. Dep’t of Soc. Servs., 901 F.2d 387, 391 (4th Cir. 1990). Further, the Court is “not bound to accept as true a legal conclusion couched as a factual allegation.” Papasan v. Allain, 478 U.S. 265, 286 (1986).

The Prisoner Litigation Reform Act (“PLRA”) provides that a prisoner must exhaust his administrative remedies prior to the commencement of a civil action under § 1983. The PLRA provides, in pertinent part that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a).

In Porter v. Nussle, 534 U.S. 516 (2002), the Supreme Court held that the PLRA’s exhaustion requirement applies to all inmate suits about prison life and the Court found that “exhaustion in cases covered by § 1997e(a) is now mandatory.” Id. at 524 (citation omitted). The Porter Court went on to stress that the exhaustion requirement must be met before commencement of the suit. Id. Whether an inmate has properly exhausted his administrative

remedies is a matter to be determined by referencing the law of the state where the prisoner is incarcerated. See Jones v. Bock, 549 U.S. 199, 218 (2007) (“The level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison’s requirements, and not the PLRA, that define the boundaries of proper exhaustion.”).

In his complaint, Plaintiff admits that he did not file a written grievance regarding the Taser incident. (Compl. at 2). Because it plainly appears that Plaintiff failed to exhaust his administrative remedies prior to filing his complaint, Plaintiff’s complaint will be dismissed. Moreover, it does not appear that the use of force in this instance, that is, after Plaintiff fled law enforcement on foot after what appears to be a legitimate traffic stop, was excessive or otherwise in violation of Plaintiff’s constitutional rights.

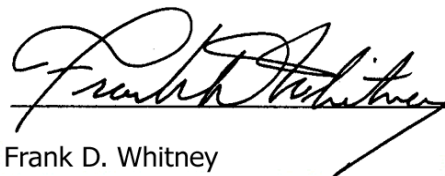
IT IS, THEREFORE, ORDERED that Plaintiff’s complaint is **DISMISSED WITHOUT PREJUDICE**. (Doc. No. 1).

IT IS FURTHER ORDERED that Plaintiff’s motion to appoint counsel is **DENIED**. (Doc. No. 10).

The Clerk of Court is respectfully directed to close this civil case.

SO ORDERED.

Signed: December 8, 2016



Frank D. Whitney
Chief United States District Judge

